(entitled "Hints to Young Lawyers,") there is one passage which will be especially interesting to those who have studied in the Harvard Law School within the last twenty-five years. Mr. Carter says: "The importance to the lawyer, and especially to the young lawyer, of making each task he may be called upon to perform the special means of enlarging and disciplining his own powers will be better understood if we consider the different degrees of ease with which the same knowledge may be acquired under different conditions of the mind. When the student, under the influence of no other motive than the feeling that it is necessary for his general purposes, applies himself to the study of some special subject, he is obliged to compel the attention by a conscious exertion of his will, — always a painful labor; the work soon becomes irksome, the attention is constantly diverted, the impression on the mind is slight and evanescent, and the task is apt to be thrown aside in disgust. Far otherwise, however, when the lawyer is employed upon some concrete question arising in the actual affairs of men, when there is an immediate object in view; . . . the whole mind is wakened into activity, and experiences the highest of intellectual pleasures, that of overcoming difficulties; it is not satisfied with one acquisition, but demands more; what would otherwise be work becomes play." And, Mr. Carter goes on, "You will begin to see that the law consists of a few general principles, and that its variety and difference proceed only from the infinite variety of the facts with which it deals." He is speaking, as his context shows, of the actual working up of a case in practice. Nevertheless, the case system of instruction, to its credit be it said, is fairly described by his words. No one can study law with the actual cases before him without seeing the dramatic force of the situations which they present, or without experiencing "the highest of all intellectual pleasures" in mastering for himself the difficulties which have been struggled with by past and present generations of judges in their attempts to apply "a few general principles of justice" to the infinite diversity of the facts which have been brought before them by *Angus* and *Dalton*, *Perrin* and *Blake*, *Patch* and *White*, *Dred Scot* and *Sandford*, and the millions of less known litigants, whose troubles have been none the less real, though they serve now only to add bulk to the digests. There are, and will be, men who study law only because they see in it a necessary means to a living, as they would work a treadmill in the poorhouse; but to those who will care for their profession, and love it as it deserves to be loved by its every member, a distinguishing merit of the case system of study is to be found in that close friendship with the courts in their actual work of doing justice which Mr. Carter urges, and which his forcible oratory should inspire.

In another respect also Mr. Carter's address is valuable; for when a man of his standing in the profession speaks out to his juniors from his own experience they cannot fail to get some insight into the causes of success; and a man of his standing rarely speaks out so freely.

CAN ONE CHEATED INTO PLEADING GUILTY MAINTAIN AN ACTION FOR IT? — In *Johnson* v. *Girdwood*, 28 N. Y. Suppl. 151 (N. Y. City Common Pleas), it appeared, upon demurrer to the complaint, that the plaintiff was arrested and prosecuted on the false and malicious complaint of the defendant, and that on the representation of the defendant that a plea of guilty "would benefit the plaintiff, and would terminate the proceedings

against him, and that he would be released from arrest and imprisonment," the plaintiff pleaded guilty, and promptly got ten months in jail. Pryor, J., and Daly, C. J., in able opinions, said that it was not possible that for such a confessed wrong the plaintiff should be remediless; that the judgment was an estoppel only between the plaintiff and the government, and that it certainly could not under these circumstances be used as a shield for the defendant, whether or no the action came within the lines of any previous cases. They ordered judgment for the plaintiff, with costs, Bischoff, J. concurring.

The case may go through one or more stages of appeal before final decision, and final comment on it is therefore not possible. But there are considerations which may for the sake of convenience be put in the form of an argument against this result. The court appear to regard the action as for a new species of grievance; but it certainly bears a suspicious resemblance to the familiar action for malicious prosecution; and if viewed in this light its maintenance upon the admitted facts is apparently at variance with one of the fundamental legal doctrines under that head of the law; for, among other requisites to the maintenance of that action, it has been considered essential, not only that the original prosecution should have been terminated, but also that it should (except in *ex parte* cases) have terminated favorably to the original defendant. This decision practically dispenses with the latter requirement in cases where the original complainant has by fraud prevented the accused from making a successful defence. Unless the general rule is to be completely abolished, is not the expediency of this exception open to doubt? The original judgment ought to be vacated for fraud, and in at least one jurisdiction that would probably be done (*Buzzell* v. *State*, 59 N. H. 61). But so long as it stands unreversed, is it desirable to allow an action for maliciously procuring it? In *Severance* v. *Judkins*, 73 Me. 376, it was *held* that judgment upon a verdict of guilty, though procured by the perjured testimony of the complainant, effectually bars an action for malicious prosecution. What difference is there between the complainant's testifying falsely against the accused, and his fraudulently inducing the accused to testify falsely against himself? What difference is there between wrongfully procuring a verdict of guilty, and wrongfully inducing a plea of guilty? Is not the judgment procured by fraud in the one case as well as in the other? Or if there be a distinction between the two cases, is there not more reason for denying an action to one who has himself confessed his guilt, than to one who has been convicted of guilt upon the testimony of others? It is believed that the denial of remedy in cases like *Severance* v. *Judkins* is not properly based upon the theory that the judgment operates as a technical estoppel, nor is it based solely upon the protection which the law affords to witnesses, but rather upon the general public policy of discouraging actions for malicious prosecutions. It has been said that where a conviction in a court of the first instance, subsequently reversed in a higher court, was procured by the fraud of the complainant, he could not avail himself of the conviction as evidence of probable cause, or as a bar to an action. See cases in Cooley, Torts, 2d ed., 214, n. 3, and *Burt* v. *Place* 4 Wendell, 591. But it will be noted that in these cases the prosecution had finally terminated favorably to the accused. They do not go so far as to hold that the original defendant could have maintained an action if he had not appealed, or if his conviction had not been reversed in the higher court.

To sustain the decision in the principal case it will then be necessary to distinguish between the wrongful institution of a prosecution and the wrongful carrying on of one after it has been wrongfully commenced. But is it not a question for serious consideration whether the grounds of public policy which forbid an action for the former prosecution unless it has terminated favorably to the accused do not also apply to this action for the latter wrong? All this is meant by way of argument rather than as criticism.

SHOP-BOOKS WILL UP. — Order XXX. Rule 7, promulgated by the English Supreme Court in August, 1894, to the effect that, on the hearing of the summons, the court or a judge may order that evidence of any particular fact, to be specified in the order, shall be given by statement on oath of information and belief, or by the production of documents or *entries in books*, or by copies of documents or entries, or otherwise as the court or judge may direct, (35 Weekly Notes, 1894, Sept. 1,) is a noteworthy step, and one of some importance in the law of evidence. In spite of the reliance placed by merchants upon the accuracy and trustworthiness of commercial memoranda, account-books, statements, receipts, etc.; in spite of the fact that this confidence in their responsibility as modes of proof has been recognized and enforced in the Roman, French, Scotch and American laws (though to different extents in the various States of the Union); in spite of an English statute (7 Jas. I. c. 12), as yet unrepealed and to be found as still law in Vol. I. of the English "Statutes Revised," p. 691, — the English upper courts, at least, have steadily regarded this admission of shop-book evidence as inconsistent with the principles of common law, and have done their best to discredit it on that ground.

Although text-writers have deplored this attitude of the English courts, as one founded in a misapprehension of the law, and have endeavored to encourage as much as possible the admission of such evidence, (Thayer, Cases on Evidence, 470, note, 506, note; Greenleaf on Evidence, § 118 *et seq.*, and notes; Taylor on Evidence, 7th ed., § 709,) yet with the exception of the relaxation in the Chancery Procedure Act of 1852, the English courts have almost unwaveringly maintained their attitude until the present time. Now, however, by a sudden and decisive change of front, they have boldly adopted in a generalized form that rule against which they so bitterly fought, and, in their latest batch of orders of court, have given a decided recognition of the fact that they had gone too far in discrediting that evidence, on which business men almost implicitly rely.

FLETCHER *v.* RYLANDS. — Although there is probably no decision of the Supreme Court of Massachusetts exactly in point, its tendency, at least, appears hitherto to have been strongly directed toward the doctrine of *Fletcher* v. *Rylands* (L. R. 3 H. of L. 330). That case is cited again and again, in many decisions with marked approbation, in few, if any, with anything approaching disapproval. Indeed, taking in consideration the long and respectable line of dicta that way, it was to be anticipated, perhaps, that that doctrine would finally be adopted as the settled law of the Commonwealth. Such expectations have, however, received a rude shock in the latest decision of that court, *James Cork et al* v. *Barney Blossom et al.*